

**Fish Engineering & Construction Partners, Ltd. and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada, Local 469; Arizona State District Council of Carpenters, Including Millwrights, Local 1914; International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers, AFL-CIO, Local 627; Operative Plasterers and Cement Masons, Local 394; International Association of Heat and Frost Insulators and Asbestos Workers, Local 73; Operating Engineers, Local 428; International Association of Bridge, Structural and Ornamental Iron Workers, Local 75; Painters Local Union No. 86; Construction, Production and Maintenance Laborers Union Local 383; Sheet Metal Workers' International Association, Local Union No. 359, AFL-CIO, Joint Petitioner.** Case 28-RC-4998

September 16, 1992

#### DECISION ON REVIEW AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDABAUGH

The Board has delegated its authority in this proceeding to a three-member panel, which has considered the Joint Petitioner's request for review of the Regional Director's Decision and Order (pertinent portions of which are attached as an Appendix), as well as the Employer's statement in opposition and motion to strike. On February 27, 1992, the Regional Director issued a Decision and Order dismissing the petition because he found it was speculative as to whether the Employer would secure additional work within the geographic boundaries of the petitioned-for unit. The Regional Director also found it unnecessary to reach unit issues because of his dismissal of the petition. After careful consideration of the undisputed facts, we have decided to grant review and remand the proceeding to the Regional Director for further processing.

The Regional Director dismissed the petition despite finding that the Employer had worked on four projects in the past year, had two current projects at the time of the hearing, and had bid on another project for the same company with which it currently is under contract (El Paso Natural Gas). That project will commence approximately 2 months from the end of the Employer's current project, and in the same geographic area as the sought unit. Based on this undisputed evidence of the Employer's past and current work, and its bidding on future work within the unit sought by the Joint Petitioner, the Board finds that it would serve a useful purpose to conduct an immediate election after resolving the remaining unit issues. See *S. K. Whitty & Co.*, 304 NLRB 776 (1991).

This case is distinguishable from *Davy McKee Corp.*, 308 NLRB 839 in which we denied review of

the Regional Director's Decision and Order dismissing a petition.<sup>1</sup> The uncontradicted findings of the Regional Director in that case indicated that when the work of Davy McKee Corporation on its current projects was complete, Davy McKee's operations would cease and all employees would be terminated. The Regional Director also found in *Davy McKee* that the employer had no ongoing projects within the geographic scope of the unit sought by the joint petitioner, and no projects under bid. Although the joint petitioner contended that the employer had bid on future projects, it failed to provide any evidence of such bidding or to contradict the Regional Director's finding that this contention was based on uncorroborated hearsay. In contrast, there is no dispute that the Employer here has worked on several recent projects in the area and has bid on future work with its current contractor.

#### ORDER

Accordingly, the proceeding is remanded to the Regional Director to resolve the remaining unit issues and, if appropriate, to conduct an immediate election.

MEMBER DEVANEY, dissenting.

I would deny the request for review, as I agree with the Regional Director's determination that no useful purpose would be served by conducting an election at this time.

#### APPENDIX

The Joint Petitioner in its amended petition seeks to represent a collective-bargaining unit consisting of all full-time and regularly employed part-time construction employees employed by the Employer at any project within the State of Arizona and within that portion of the Navajo Reservation within the State of New Mexico, excluding all other employees, including office clerical employees, professional employees, engineers, guards and supervisors as defined by the Act.

The Employer is a Texas partnership that provides engineering procurement and construction services to a variety of customers in the petrochemical refining, and gas transmission industry. At the time of the hearing, the Employer was engaged as a general contractor on two construction projects within the geographic boundaries of the petitioned-for unit. The Dilkon project was initiated pursuant to a contract between the Employer and the El Paso Natural Gas Company which provided for a move-in date by the Employer of August 20, 1991, and a completion date of March 11, 1992.<sup>1</sup> The Dilkon project is located on the Navajo Reservation inside Arizona. The job at Dilkon involves the building of an additional compressor at an existing compressor station for the purpose of moving natural gas through pipelines. The White Rock project is located on the Navajo Reservation at White Rock, New Mexico. The White Rock contract between the Employer and El Paso Natural Gas Company provides for an Employer move-in date of August 20, 1991, and com-

<sup>1</sup> Joint petitioner is the same in that case.

<sup>1</sup> All dates are 1992 unless otherwise indicated.

pletion date of February 24th. The job at White Rock involves the same type of work as at Dilkon, i.e., adding a compressor to an existing compressor station. According to the Employer, the Dilkon project, as of the date of the hearing on February 6th, was approximately 80 percent complete and had a target date for the completion of all mechanical work as of March 1st. The White Rock project was approximately 83.5 percent complete with a target date for the completion of the mechanical work of February 28th. After the mechanical work is completed at the Dilkon project, certain cosmetic work remains to be completed pursuant to the contract, including the application of insulation, painting, the construction of a road within the project property, as well as grading and covering the area with cosmetic rock and gravel. Of the remaining cosmetic work to be performed at Dilkon, the Employer has subcontracted to other contractors the insulation work, the painting, the grading, and the road construction. After the cosmetic work at Dilkon is completed, the only work left is demobilization. Demobilization encompasses the Employer's removal and shipping out from the project all of its own construction equipment as well as other leased equipment still on the property. With respect to the demobilization, the Employer utilizes some riggers, equipment operators, and a few laborers for final housekeeping chores. The demobilization at Dilkon will be completed approximately at the end of the third week of March. At the White Rock project, in addition to the mechanical work, the Employer is responsible for the completion of some electrical work involving area lighting as well as some electrical work within the compressor station, grading, insulating, painting, and demobilization. The electrical and painting work is to be completed by the Employer's own employees, while the insulation and grading work have been subcontracted. As at Dilkon the Employer, at White Rock, will utilize its own employees for demobilization which is scheduled for the last quarter of March.

The Employer contends that the petition should be dismissed because its two ongoing projects at Dilkon and White Rock will be completed shortly and, thus, that no useful purpose will be served by conducting an election. The employer further contends that while it has submitted an unsolicited bid to perform work for the El Paso Natural Gas Company at the Navajo Station project, which is located within the geographical boundary of the petitioned-for unit, that is an insufficient and speculative basis to direct an election since the Employer is not on a select or exclusive list of contractors with which El Paso Natural Gas prefers to do business, and that, as of the date of the hearing, it has secured a total of only four contracts within that geographical area, including Dilkon and White Rock, with the other two contracts having been completed in 1991, as described in more detail hereinafter. The Employer also asserts that the proposed multi-site bargaining unit is not appropriate, but instead should be limited to specific jobsites. The Employer took no position with respect to the petitioned-for unit's inclusion of all construction employees regardless of craft, as distinguished from separate craft units.

Contrary to the Employer, the Joint Petitioner asserts that the petitioned-for unit which seeks the inclusion of all construction employees is a presumptively appropriate unit and that the record demonstrates that since the Employer is quite likely to continue to perform work within the geographical

area of the unit description that it would be contrary to the policies and purposes of the Act to dismiss the petition.

I have concluded that the issue which is dispositive of this case is whether it will serve any useful purpose to proceed with a determination of representative at this time in view of the scheduled completion dates of the Dilkon and White Rock projects. As noted, the White Rock project has an approximate mechanical completion date of February 28th, and the Dilkon project as of March 1. Testimony established that the remaining work at both projects, part of which is to be performed by subcontractors of the Employer, and the demobilization of the sites should be completed prior to the end of March. No evidence was adduced to contradict the Employer's projection for completion of the projects by that time. The Joint Petitioner argues that since the Employer has performed work in the unit area, both on the current and some past projects, for the El Paso Natural Gas Company, and that since there is a possibility that the Employer may secure a job in the near future, and that some employees in the current work force have reasonable expectations of continued employment on this anticipated project, that it would be inappropriate to dismiss the petition.

I am not persuaded by the Joint Petitioner's contention that it would be inappropriate to dismiss the petition for the following reasons. According to General Manager Colquitt, who is involved in the formulation of bids and proposals for the Employer, the Employer does not currently have any contracts for construction work with El Paso Natural Gas Company or any other company within the geographical area of the petition other than the Dilkon and White Rock projects. Colquitt testified further that the Employer has submitted an unsolicited bid to El Paso Natural Gas Company hoping to secure work on a possible project near Chambers, Arizona, known as the Navajo Station project. According to Colquitt, the Employer has a number of business competitors who have performed the same type of work for El Paso Natural Gas Company, including the Davy McKee Corporation. [See my Decision and Order in *Davy McKee Corp.*, Case 28-RC-4996, dated February 24, 1992, where it was noted that Davy McKee was engaged at that time as a general contractor for the El Paso Natural Gas Company at the Navajo Compressor Station (the Navajo Project) located at Chambers, Arizona.] The project at the Navajo Station is estimated to commence, if at all, during this coming summer. The project will take six months to complete, and will employ some 55-65 construction employees, approximately the same number as were employed at the Dilkon project. Colquitt testified that except for the Navajo Station the company has no immediate plans to submit any other bids for construction work in the geographical area embraced by the petition.

The record reveals that as of the date of the hearing, February 6th, the Employer employed approximately 53 construction employees at Dilkon and 72 at White Rock. By March 1st, the employment complement will be reduced to approximately 15 at Dilkon and 20 at White Rock. Thereafter, the numbers will continue to be reduced through the demobilizations, which will occur prior to the end of March at which time all employees will be terminated.

It is clear under existing Board precedent that when an employer's operations are scheduled to wholly terminate within two months of the date of the representation hearing, that no useful purpose is served by directing an election.

*M. B. Kahn Construction Co.*, 210 NLRB 1050 (1974); *General Motors Corp.*, 88 NLRB 119 (1950); *Todd-Galveston Dry Docks*, 54 NLRB 625 (1944); *Fraser-Brace Engineering Co.*, 38 NLRB 1263 (1942); and *Fruco Construction Co.*, 38 NLRB 991 (1942). The only remaining issue is whether there is a sufficient basis to direct an election based upon the Employer's past work history within the geographical area covered by the petition and its pending unsolicited bid to El Paso Natural Gas Company for work at the Navajo Station Project. In my view, the record does not warrant directing an election based upon the sheerly speculative possibility that the Employer may secure additional work within the geo-

graphical boundaries of the petition, particularly where, as here, the El Paso Natural Gas Company has awarded similar projects to various contractors other than the Employer. In the event the Employer secures a contract for a new project, the Joint Petitioner will have the opportunity to file a new petition, and, if appropriate, the other issues raised by the parties herein may be resolved at that time.

#### ORDER

IT IS HEREBY ORDERED that the petition in the above matter be, and it hereby is, dismissed.